

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<b>STATE OF OKLAHOMA, ex rel.</b>	)	
<b>W. A. DREW EDMONDSON, in his capacity as</b>	)	
<b>ATTORNEY GENERAL OF THE STATE OF</b>	)	
<b>OKLAHOMA and OKLAHOMA SECRETARY</b>	)	
<b>OF THE ENVIRONMENT C. MILES TOLBERT,</b>	)	
<b>in his capacity as the TRUSTEE FOR NATURAL</b>	)	
<b>RESOURCES FOR THE STATE OF OKLAHOMA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>05-CV-0329 JOE-SAJ</b>
	)	
<b>TYSON FOODS, INC., TYSON POULTRY, INC.,</b>	)	
<b>TYSON CHICKEN, INC., COBB-VANTRESS, INC.,</b>	)	
<b>AVIAGEN, INC., CAL-MAINE FOODS, INC.,</b>	)	
<b>CAL-MAINE FARMS, INC., CARGILL, INC.,</b>	)	
<b>CARGILL TURKEY PRODUCTION, LLC,</b>	)	
<b>GEORGE'S, INC., GEORGE'S FARMS, INC.,</b>	)	
<b>PETERSON FARMS, INC., SIMMONS FOODS, INC.,</b>	)	
<b>and WILLOW BROOK FOODS, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
<b>TYSON FOODS, INC., TYSON POULTRY, INC.,</b>	)	
<b>TYSON CHICKEN, INC., COBB-VANTRESS, INC.,</b>	)	
<b>GEORGE'S, INC., GEORGE'S FARMS, INC.,</b>	)	
<b>PETERSON FARMS, INC., SIMMONS FOODS, INC.,</b>	)	
<b>and WILLOW BROOK FOODS, INC.,</b>	)	
	)	
<b>Third Party Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>City of Tahlequah, <i>et al.</i>,</b>	)	
	)	
<b>Third Party Defendants.</b>	)	

**DEFENDANT/THIRD PARTY PLAINTIFFS' MOTION FOR EXPEDITIED  
RULING ON DOCKET NO. 173 -- THEIR MOTION TO TOLL RUNNING  
OF TIME TO SERVE PROCESS UPON THIRD PARTY DEFENDANTS  
PENDING DISPOSITION OF DEFENDANTS' MOTION TO STAY**

Defendant/Third Party Plaintiffs, Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc., (hereinafter "Third Party Plaintiffs") hereby request that the Court expedite consideration and disposition of Docket No. 173, which is their *Motion to Toll Running of Time to Serve Process Upon Third Party Defendants Pending Disposition of Defendants' Motion to Stay [Docket No. 125]* (hereinafter the "Motion to Toll Service"). Third Party Plaintiffs ask for expedited consideration as the underlying Motion will be rendered moot by the passage of time if it is not ruled upon by **January 17, 2006**. In support of their Motion, Third Party Plaintiffs will show the Court:

1. On December 23, 2005, the Third Party Plaintiffs filed their Motion to Toll Service requesting the Court to toll the running of the 120-day time limit for serving 253 Third Party Defendants named in their Third Party Complaint pending the Court's disposition of the Defendants' *Motion to Stay Proceedings* filed on November 14, 2005 (Docket No. 125). Defendants' Motion to Stay was filed in light of the Motion for Leave to File Bill of Complaint and Bill of Complaint filed on November 3, 2005 by the Arkansas Attorney General in the United States Supreme Court in the case styled, *State of Arkansas v. State of Oklahoma*, No. 220133 (Original 2005) [the "Supreme Court action"]. As the Motion to Stay sets forth in detail, the Arkansas Attorney General is pursuing an injunction in the Supreme Court, which would prevent the prosecution of the State of Oklahoma's pollution-based claims in the lawsuit before this Court. Given that the Supreme Court's disposition of Arkansas' claims could moot or invalidate further substantive proceedings in this lawsuit, the Defendants have requested that the Court stay

the proceedings, and respectfully suggest that their Motion to Stay should be the first matter taken up and decided by the Court prior to ruling on any of the other dispositive and procedural motions currently before it.

2. Third Party Plaintiffs filed their Third Party Complaint on October 4, 2005 (Docket No. 80), setting forth their claims against 256 individuals and entities.<sup>1</sup> Based upon the allegations and theories advanced by the Plaintiffs in their First Amended Complaint, the Third Party Plaintiffs assert that if they are liable to the Plaintiffs for any alleged natural resource injuries within the Illinois River Watershed (which is denied), then the Third Party Defendants should be held similarly liable based upon their operations and conduct, which has the same effect or potential to effect the Illinois River Watershed as those alleged against the Defendants.

3. Fed. R. Civ. P. 4(m) dictates that the Third Party Defendants must be served by **February 1, 2006**. Third Party Plaintiffs seek tolling of the service deadline on 253 non-pubic persons and entities to avoid expanding the lawsuit to include these Third Party Defendants until such time as the Court rules upon the Defendants' Motion to Stay, thereby determining that either: (1) the proceedings in the lawsuit should be stayed pending the outcome of the Supreme Court action, and therefore, the Third Party Defendants need not be served with process until such time as the Court's stay is lifted; or (2) the lawsuit should not be stayed, and therefore, the litigation should proceed including the assertion of jurisdiction over the Third Party Defendants.

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<sup>1</sup> As the Motion to Toll Service sets out, the Third Party Plaintiffs are not seeking to toll the time for service on the three political subdivisions identified as Third Party Defendants, which are subject to Oklahoma's Governmental Tort Claims Act.

4. Unless the Court sustains the Third Party Plaintiffs' Motion, thereby tolling the running of the 120-day limit for serving process, the timing is such that the Third Party Plaintiffs will need to commence serving these third parties **by no later than January 17, 2006**. The Court has the discretion under Rules 4(m) and 6(b) to enter an order tolling the running of this time period under these circumstances, and the Third Party Plaintiffs submit that it is in the best interest of justice to do so.

5. Taking up and sustaining the Motion to Toll Service prior to January 17, 2006 (the date the Third Party Plaintiffs will need to commence service of process) will have the added benefit of preserving the status quo of the action. Accordingly, the Third Party Plaintiffs request that the Court consider and rule upon their Motion to Toll Service prior to January 17, 2006.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that on the 23 day of December 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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